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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BENNIE DIXON,

Petitioner,

vs.

TIM VIGRA, Warden

Respondent.

Civil No. 13-0151 WQH (PCL)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

Petitioner, Bennie Dixon, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his October 7, 2005 conviction in San Diego Superior Court case No. SCN189576. On September 24, 2008, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 08cv1764 JM (BLM). In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SCN189576 as well. On April 28, 2010, this Court denied the petition on the merits. (See Order filed April 28, 2010 in case No. 08cv1764JM (BLM) [ECF. No. 44].) Petitioner appealed that determination. On December 21, 2011, the

1 Ninth Circuit Court of Appeals denied Petitioner's request for a certificate of appealability. (*See*
2 Order in *Dixon v. Adams*, No. 10-55959 (9th Cir. Dec. 21, 2011).)

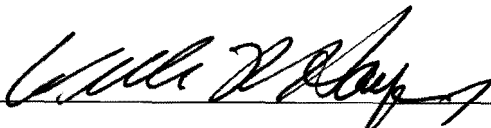
3 Petitioner is now seeking to challenge the same conviction he challenged in his prior
4 federal habeas petition. Unless a petitioner shows he or she has obtained an Order from the
5 appropriate court of appeals authorizing the district court to consider a successive petition, the
6 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Here, there is no
7 indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive
8 petition.

9 **CONCLUSION**

10 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
11 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
12 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
13 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. For
14 Petitioner's convenience, the Clerk of Court shall attach to this Order, a blank Ninth Circuit
15 Application for Leave to File Second or Successive Petition.

16 **IT IS SO ORDERED.**

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18 DATED: 2/4/13


19 William Q. Hayes
20 United States District Judge
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